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Supreme Court of the United States

OCTOBER TERM, 1951

No. 110

WILLARD WILLIAMS,
Petitioner,

v.

DR. IVAN W. STEELE, WARDEN UNITED STATES MEDICAL CENTER, SPRINGFIELD, MISSOURI.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Eighth Circuit affirming the order of the District Court for the Western District of Missouri, Western Division, dismissing without a hearing his petition for a writ of *habeas corpus*.

Opinions Below

The order of the District Court dismissing petitioner's petition for a writ of *habeas corpus* was filed June 4, 1951 (R. 5). The opinion of the Court of Appeals (R. 10) is reported in 194 F. 2d 32.

Jurisdiction

The judgment of the Court of Appeals was entered on February 5, 1952 (R. 15). Timely application for rehearing was denied on March 10, 1952 (R. 27). The jurisdiction of this Court is invoked under Title 28, U. S. C., Section 1254.

Question Presented

The sole and fundamental question presented by this petition is whether a federal court has jurisdiction and must grant a hearing to the petitioner for a writ of *habeas corpus* upon allegations, not controverted, that he is a federal prisoner who is being subjected to cruel and unusual punishment.

Conversely stated, the question is whether a person who is in the otherwise lawful custody of the Attorney General is entitled to relief through a petition for a writ of *habeas corpus* where, in violation of his rights under the Eighth Amendment, it is alleged that he is being subjected to cruel and unusual punishment by federal officials acting under color of office.

Statutes Involved

The pertinent provisions of the Constitution and statute involved in this case are set out in the Appendix.

Statement

The facts appear in the petition for habeas corpus filed in the District Court (R. 1). Petitioner was, on June 7, 1946, sentenced to life imprisonment under Sections 1111 and 1151, Title 18, U. S. C. A., and placed in the custody of the Warden of McNeil Island Penitentiary. In June,

1949, he was transferred to the United States Medical Center at Springfield, Missouri, where he is presently confined (R. 2). On May 19, 1951, he filed a petition for a writ of *habeas corpus* in the District Court for the Western District of Missouri, Western Division, alleging that cruel and unusual punishment had been and was being inflicted upon him by federal prison officials.

Acting as his own lawyer in the District Court, petitioner alleged in his own phrasing that he has been subjected to cruel and unusual punishment in the official discipline and restraint administered to him. He alleges that on the 26th day of February, 1950, he was "taken to isolation for a period of seventeen days' confinement", and that on the 8th day of March he was subjected to the "first series of 'excruciatings'" (R. 3). That subsequently he protested to the Associate Warden, but to no avail. He further alleges that on the same day he made his complaint to the Associate Warden he was again placed in a barren cell, remaining there for a period of almost three months, and he further states (*Ibid.*) that without reason and without explanation he has on two other occasions since been locked in a barren cell for long periods of time. He states (R. 3) that during one period of solitary confinement he received a "severe burn, of the * * * left arm, due to the 'excruciatings', by persons whose true names are unknown to this Petitioner", and that "During these periods of confinements the 'excruciatings', became so unbearable that this Petitioner voiced his grievance to the officials on numerous occasions, without consequence". The petition was summarily dismissed without hearing or findings of fact on June 4, 1951 (R. 5), the District Court ruling (R. 5-6):

> "The petitioner cites the case of Logan *v.* United States, 144 U. S. 263 as vouchsafing to him rights

while in custody. The Logan case was one where other persons were prosecuted for injuring persons in custody as prisoners. The petitioner is deprived of no rights by the prison authorities in the exercising and enforcing of regulations and regimentation and discipline. If a prisoner should be mistreated by prison authorities, the Department of Justice has the power to correct any abuses that may occur in the executive branch of government under which the respondent operates; or any person wrongfully inflicting injuries upon the person of petitioner while a prisoner may be prosecuted, as stated in the Logan case, supra.

Since petitioner admittedly is held by proper authority, this court is without jurisdiction to interfere. Accordingly the petition for a writ of habeas corpus should be and hereby is ordered dismissed."

On June 13, 1951, petitioner appealed to the United States Court of Appeals for the Eighth Circuit (R. 6) and on November 17, 1951, oral argument was had and briefs were filed on behalf of both parties (R. 9). The Court of Appeals, on February 5, 1952, affirmed the judgment of the District Court (R. 15) holding that the Bureau of Prisons and the Attorney General have full and exclusive power to supervise and discipline prisoners and the courts will not interfere, on *habeas corpus,* except to inquire into the *legality* of a prisoner's detention (R. 10 ff.).

Petitioner, by his counsel, filed a petition for rehearing on February 20, 1952 (R. 15) which was denied on March 10, 1952, the Court of Appeals holding on motion for rehearing that in its opinion *habeas corpus* "has not been further extended to embrace the correction of alleged unconstitutional mistreatment by prison authorities subsequent to valid judgment and commitment" (R. 26-7).

Specification of Errors to be Urged

1. The Court below erred in holding that a petitioner for a writ of *habeas corpus* was not entitled to a hearing and relief in the appropriate United States District Court upon allegations, not controverted,[1] that petitioner, though lawfully committed to a federal prison, was being subjected to cruel and unusual punishment by his federal jailers, acting under color of their office.

2. The court below erred in holding that federal courts in such cases may not interfere, on *habeas corpus,* except to inquire into the legality of a prisoner's detention.

REASONS FOR GRANTING THE WRIT

I

The decision of the court below is in direct conflict with decisions of other Courts of Appeal.

A. The decision of the court below is in direct conflict with the unanimous decision of the Court of Appeals for the Sixth Circuit in *Coffin* v. *Reichard* (1943), 143 F. 2d 443, 155ALR 143.

The court below recognizes this conflict, and (referring to *Coffin* v. *Reichard*) states:

> "That case does in fact support his argument" (R. 13).

The court below has held that irrespective of the deprivation of his constitutional right and no matter how

[1] Since the petition was dismissed without hearing any evidence, the allegations must be accepted as true for purposes of appeal.

cruel or unusual the punishment inflicted upon him might be, the petitioner can obtain no relief upon *habeas corpus*, because:

(1) The writ has not been extended to protect the constitutional rights of a federal prisoner to be free from cruel and unusual punishment, and (2) because the "discipline" of prisoners rests with the Attorney General and the Bureau of Prisons.

Faced with virtually identical allegations and with the same relief requested, *i.e.*, that a federal prisoner have such hearing as would enable him to show that his constitutional rights had been violated and should be restored, the Court of Appeals for the Sixth Circuit in *Coffin* v. *Reichard* reversed the ruling of the district court, dismissing the prisoner's petition for *habeas corpus*. There the Court of Appeals ordered that the petition be filed, that counsel be appointed to represent the petitioner, and that a show cause order be issued to the prison authorities.

The Sixth Circuit Court of Appeals, after detailing the allegations of the petition (which are substantially the same as in this petitioner's petition), *id.* at 444, *et seq.*, stated:

> "The detail of these incidents is unnecessary to a decision of the issue before us. Suffice it to say, the acts of which appellant complains, if true, were contrary to the regulations of the institution in which he was confined and were not necessary for the proper punishment of an insubordinate inmate to secure his submission and obedience to its reasonable rules and regulations.
>
> * * *
>
> Any unlawful restraint of personal liberty may be inquired into on habeas corpus. In re Bonner,

151 U. S. 242, 14 S. Ct. 323, 38 L. Ed. 149. *This rule applies although a person is in lawful custody. His conviction and incarceration deprive him only of such liberties as the law has ordained he shall suffer for his transgressions.*

The Government has the absolute right to hold prisoners for offenses against it but it also has the correlative duty to protect them against assault or injury from any quarter while so held. *A prisoner is entitled to the writ of habeas corpus when, though lawfully in custody, he is deprived of some right to which he is lawfully entitled even in his confinement,* the deprivation of which serves to make his imprisonment more burdensome than the law allows or curtails his liberty to a greater extent than the law permits. Logan *v.* United States, 144 U. S. 263, 12 S. Ct. 617, 36 L. Ed. 429.

A prisoner retains all the rights of an ordinary citizen except those expressly, or by necessary implication, taken from him by law. *While the law does take his liberty and imposes a duty of servitude and observance of discipline for his regulation and that of other prisoners, it does not deny his right to personal security against unlawful invasion.*

When a man possesses a substantial right, the courts will be diligent in finding a way to protect it. *The fact that a person is legally in prison does not prevent the use of habeas corpus to protect his other inherent rights.*

28 U.S.C.A., Sec. 461, authorizes the court in habeas corpus proceedings to dispose of the party 'as law and justice require'. *The judge is not limited to a simple remand or discharge of the prisoner, but he may remand with directions that the prisoner's retained civil rights be respected, or the court may order the prisoner placed in the custody of the Attorney General of the United States for transfer to some other institution.*" (Emphasis ours.)

Possibly the sharp conflict[2] in the rulings of these two Courts of Appeals is best focussed by the following excerpts:

Coffin v. *Reichard*, 143 F. 2d 443, l. c. 445:

> "The fact that a person is legally in prison does not prevent the use of habeas corpus to protect his other inherent rights."
>
> "A prisoner is entitled to the writ of habeas corpus, when although lawfully in custody, he is deprived of some right to which he is lawfully entitled even though in confinement."

Williams v. *Steele* (the cause before this Court) (R. 26-27):

> "It was and is our conclusion that the extent of the application of the Writ has not been further extended to embrace the correction of alleged unconstitutional mistreatment by prison authorities subsequent to valid judgment and commitment."

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[2] This patent conflict is also forcefully noted and clearly set out in 20 Law Week 1124 (February 12, 1952) as follows:

> "Eighth Circuit Disagrees with Sixth's Use of Habeas Corpus"
>
> "Taking issue with the Sixth Circuit's definition in Coffin *v.* Reichard, 143 F. 2d 443, of the scope of habeas corpus jurisdiction, the Court of Appeals for the Eighth Circuit concludes that a district court has no jurisdiction of a federal prisoner's habeas corpus petition alleging mistreatment by prison authorities and requesting an order that his 'retained civil rights' be respected or that he be transferred to another penal institution.
>
> In the Coffin case, relying on the Judicial Code's provision (Section 461) that in a habeas corpus proceeding the court may dispose of the petitioner 'as law and justice require', the court decided that it was not limited to a simple remand or discharge of a prisoner. In fact, the court asserted power to grant the exact relief requested in the present case.
>
> However, the Eighth Circuit reads the Supreme Court's habeas corpus decisions as limiting the proceeding to an inquiry into the legality of the detention. The only judicial relief authorized is the discharge of the prisoner or his admission to bail."

If petitioner could have brought his appeal to the Sixth Circuit, he would have received a hearing upon his plea for relief. A hearing was denied him by the Eighth Circuit. The question is fundamental. The whole scope and force of the writ, its usefulness, application and purpose are beclouded by the uncertainty and confusion resulting from this irreconcilable conflict. This Court should resolve it.

B. The decision of the court below is in direct conflict with the decision of the Third Circuit Court of Appeals in *Johnson* v. *Dye*, 175 F. 2d 250.

The court below recognizes the conflict when it states (R. 13):

> "The reasoning of the court in *Johnson* v. *Dye*, 3 Cir., 175 F. 2d 250, would support the theory of the appellant in this case, but that case was reversed by the Supreme Court, 338 U. S. 864. The ground on which the reversal is based is not entirely clear, and it is not cited as an authority by the appellant."

While it is true petitioner did not cite *Johnson* v. *Dye*, in his brief, his counsel did call the case to the attention of the court below in oral argument.

The opinion of the Third Circuit in *Johnson* v. *Dye* was reversed by this Court, 338 U. S. 864, 70 S. Ct. 146, 942 L. Ed. 530. The court below states that the reason for the reversal "is not entirely clear", but one thing is clear—that the direct conflict between the case at bar and the decision of the Third Circuit Court of Appeals in *Johnson* v. *Dye* is in no way affected by this Court's action in that case. *Johnson* v. *Dye* was reversed by this Court in a *Per Curiam* opinion (338 U. S. 864) which merely cited

Ex parte Hawk, 321 U. S. 114. The petitioner in *Johnson* v. *Dye* had started proceedings for a writ of *habeas corpus* in a *nisi prius* state court in Pennsylvania. He did not appeal to the Supreme Court of Pennsylvania from an adverse decision by the Superior Court of Pennsylvania, but instead thereafter commenced new proceedings for the writ in the United States District Court in Pennsylvania. That was error under this Court's ruling in the *Hawk* case that all remedies in the state courts must be exhausted before a petition for *habeas corpus* could be brought in the federal courts. The *Hawk* decision was therefore applicable to *Johnson* v. *Dye*, since further state court remedies were available to the petitioner in Pennsylvania.

The question of exhausting remedies in the courts of the asylum state was involved in *Johnson* v. *Dye* and the Third Circuit expressly found that exhaustion of state court remedies was unnecessary. The reference to *Ex parte Hawk* by this Court can thus be regarded only as a rejection of the view that the state courts of the asylum state need not be resorted to before seeking relief in the federal courts.[3]

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[3] In *Jackson* v. *Ruthazer*, 181 F. 2d 588 in which this Court denied certiorari (339 U. S. 980), the Second Circuit so construed the decision in Johnson *v.* Dye. In the Jackson case the petitioner was extradited to Georgia, the federal court denying the writ of habeas corpus for the reason that he had had a full hearing in the courts of New York, the asylum state, on his allegations of cruel and unusual punishment. On the basis of the full hearing granted by the state courts, during which witnesses for the State of Georgia testified and were cross-examined, the allegations of cruel and unusual punishment were found to be without merit. There was no reason for the federal courts to intervene. The Second Circuit did not hold that absent an opportunity for a hearing in the courts of the asylum state the writ would be denied upon uncontroverted allegations of cruel and unusual punishment. The Second Circuit assumed for its purposes that Johnson *v.* Dye was correctly decided "except for the exhaustion of state remedies point" on which point the Third Circuit in Johnson *v.* Dye expressly held that there was no necessity to exhaust the judicial remedies in courts of the asylum

On the fundamental point at issue here, whether or not the writ of *habeas corpus* may be utilized to protect a federal prisoner's constitutional right to be free from cruel and unusual punishment, *Johnson* v. *Dye* is clearly still the law in the Third Circuit.

Thus the reasoning in *Johnson* v. *Dye* which "would support the theory of appellant" (petitioner) in this case deserves careful examination by this Court when it considers the instant petition. In that case Johnson had alleged, in his petition for *habeas corpus*, that he had been subjected to cruel and unusual punishment by prison officials. That court ordered the writ to issue and that the petitioner be discharged. Sitting en banc the court concluded its opinion on that point as follows:

> "In the instant case, cruel and unusual punishment already has been inflicted on Johnson as the court below and we ourselves have found. History is as potent a force as anticipation. It follows, therefore, that Johnson must be set at liberty for the State of Georgia has failed signally in its duty as one of the sovereign States of the United States to treat a convict with decency and humanity." (175 F. 2d 25-6 l. c.)

If the protection of *habeas corpus* is to be extended to a state prisoner alleging cruel and unusual punishment, it follows a *fortiori* that it must be extended to a federal prisoner.

If this petitioner had brought the writ in the Third Circuit he would have been protected. The Eighth Circuit has denied him its use. The conflict is complete. This Court should resolve it.

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state. The state court by affording the prisoner a full hearing on the question of cruel and unusual punishment was apparently of the view that if the allegations were established the prisoner would be released. Peo. ex rel. Jackson *v.* Ruthazer, 196 N. Y. Misc. 34, 90 N. Y. S. 2d 205, aff'd without opinion 276 App. Div. 832.

C. This case is of vast importance in view of the frequency of instances of prison brutality.

The problem raised by this case is not confined to the petitioner. It is no secret that the recent outbreaks of prison riots have been caused to a large extent by brutality towards prisoners. The New York Post ran an extensive series of articles in May 1952 setting forth many other instances of such brutality. In a case now pending on motion for rehearing in the Court of Criminal Appeals of Texas (*Ex Parte Beal & Cardone,* No. 25, 865, decided May 21, 1952), there is another illustration of the peculiar necessity for a consideration by the Supreme Court of this problem, for the record in that case indicates that girls between the ages of 10 and 18 are subjected in a so-called "State School" to punishment harking back to the Middle Ages, including such devices as being whipped in a near-nude state by males, and the holding of a girl in solitary confinement for 186 out of her 210-day stay, being allowed to go to the bathroom just once each day (she eventually had to be sent to a mental institution). We know of no way whatsoever in which such shames upon our nation can be rooted out except by making the writ of habeas corpus available. We know of no way whatsoever in which any of these individuals can promptly and efficiently win their protection except through a writ of habeas corpus. No one has suggested such a way, and no one has ever secured relief otherwise.

We fully realize that should this request be granted and the judgment reversed, there may well be a plethora of similar cases in the courts, which of course should be no deterrent whatsoever to the reversal of the judgment. Nor will this result in a wholesale freeing of criminals from our jails, since the courts may also "dispose of the

matter as law and justice require'' (28 U. S. C. Section 2243), and the requirements of law and justice could in most cases be settled by the issuance of an injunction against the further mistreatment of prisoners. *Cf.* page 7, *supra.*

II

The court below has decided important questions of federal law which have not been, but should be, settled by this Court.

Unless this Court resolves this issue now, and on the merits, the scope and extent of the writ of *habeas corpus* will continue to be uncertain and confused. Two Circuit Courts of Appeal have said that *habeas corpus is* the remedy to protect a prisoner from cruel punishment by prison officials. One circuit has said it is *not* the remedy.

It is possible that from time to time federal prisoners are being, and will be, subjected to cruel punishment or mistreatment. They are entitled to protection by the federal courts of the basic and constitutional right to be free from such treatment.

The court below has not only ruled that it is powerless to protect petitioner because *habeas corpus* has not been extended to protect a federal prisoner's constitutional right to be free from cruel and unusal punishment, but it has also ruled that "*the courts have no power to supervise the discipline of prisoners*".

If the court below is correct in this, not only the fundamental rights of the petitioner are affected but the basic constitutional right of all federal prisoners is abandoned to the whim and caprice of the jailer. The constitutional right involved here is not a mere rhetorical or academic one. One incarcerated in a prison still retains certain con-

stitutional rights, but of that precious bundle of rights and liberties none is more precious and meaningful to one enclosed in prison walls than to be protected against the unbridled savagery and sadism of a brutal jailer.

While petitioner might very well agree that it is neither the proper function of the courts to make the ordinary rules and regulations governing the administration of the prison system nor to become involved in the morass of administrative supervision, nevertheless petitioner urgently requests this Court to reflect upon and reconsider the unnoticed and unanticipated implications of the basis stated for the ruling by the court below.

This Court should first observe that in the phrasing of its opinion, the court below has *equated the infliction of cruel and unusual punishment with "discipline" of prisoners.* We say this because, inferentially at least, the opinion appears to concede for the purpose of the case the extraordinary and barbarous treatment of the petitioner, yet in the next breath characterized this as "discipline" when the court came to consider whether there was judicial power to intervene, and ultimately concluded that there is no power to interfere with prison "discipline". This is no mere exercise in semantics or idle difference as to the meaning of words. If what is alleged by the petitioner is to be treated as prison "discipline", immune from judicial inquiry, then what of the rack and the wheel and the other horrors invented by the wicked mind? Are all of these to go judicially characterized, in our own enlightened age, as the inevitable concomitants of prison discipline? We cannot bring ourselves to believe that the court below meant seriously to declare a rule of non-interference with prison discipline where that discipline in not in truth and in ordinary connotation discipline, but is in fact a revival of the tortures and agonies of the

Spanish Inquisition, distilled and refined by latter-day Torquemadas with added centuries of skill and experience.

It is true that this petitioner did not allege in specific terms that he was being hung by his heels, that his eyes were gouged out, or that he was being branded or flogged; but he does allege in his own inept language that he was being subjected to horrible torture and excruciating pain. The court below cannot have proceeded except in recognition that the factual allegations of his petition were in essence the equivalent of an allegation of cruel and unusual punishment, within the meaning of the Eighth Amendment to the United States Constitution. In the face of this situation, though the court below said it was powerless to correct the conditions or to protect petitioner because "the courts have no power to supervise the discipline of prisoners" (R. 14), could this have been the product of unwillingness to intervene where the lack of power was not so patent or self-evident as the Court's opinion would indicate?

Whatever those concerned with the preservation of American constitutional rights and civil liberties may think, the opinion of the court below is at least free from ambiguity in declaring, with little doubt and hesitance, that the courts of the United States are powerless to protect a prisoner in the custody of the United States from cruel and unusual punishment. Equally explicit—if not satisfying—are the reasons given: (1) that since everything that happens to a prisoner via his jailers is part of his "discipline", and since the discipline of prisoners is statutorily entrusted to the Attorney General and his representatives, the courts have no power to interfere, and (2) that *habeas corpus* is not the proper remedy.

As to the latter point the court below does not suggest any other legal weapon in the armory of justice which

might have been employed by petitioner. We recognize that ordinarily a court is not obligated to advise concerning the proper course to be pursued; but this is an extraordinary case, and a fundamental question of humanity, as well as constitutional right, is involved. If *habeas corpus* does not lie in such a situation, it would appear that no other legal remedy is apposite. And if that is so, is not the court below saying that *there is no effective judicial procedure by which any federal prisoner in these straits may be rescued from a man-made hell!* It could be conjectured that if the petitioner's allegations are true or the torture which is inflicted causes his death, there might be a civil action for wrongful death against his torturer. If this is the only avenue for judicial intervention, the discouragement of prison torture would be nil and the constitutional prohibition of cruel and unusual punishment would be only a hollow jest.

Despite petitioner's natural anxiety and vehemence, it is believed that we have fairly and clearly stated the essence of and the drastic consequences that ensue upon the ruling of the court below. Those tragic consequences are not exaggerated; they are not theoretical or hypothetical; they need not be argued as a logical extreme. They are present and may have occurred in this very case at bar. Here is a federal prisoner, this petitioner, nonetheless a human being who, by the ruling below, is consigned—unless he is to be given a hearing in open court—to the tender mercies of those to whom he has given offense by bringing this very proceeding. Under the ruling of the court below, his legal position differs in no way from that if he were a prisoner in one of the barbaric countries behind the Iron Curtain.

If *habeas corpus* is the proper remedy to invoke for the protection of federal prisoners under the Eighth

Amendment, this Court should now make an explicit ruling so that the right of a prisoner to obtain relief from the abhorrent torment and torture here alleged will not depend upon the vagaries of the circuit in which he may be incarcerated.

This Court has never ruled squarely on the issue here presented. In *Johnson* v. *Dye* and in *Johnson* v. *Matthews* 182 F. 2d 677, certiorari denied 340 U. S. 828, this court did not resolve it, but concerned itself solely with the exhaustion of state remedies, an issue not present here. Until the instant case, the rule of *Coffin* v. *Reichard* had never been challenged, so that there has been no necessity, until now, for an adjudication of the precise issue by this Court.

Conclusion

This Court is presented by this petition with a conflict involving a fundamental constitutional issue, in not merely two, but three United States Circuit Courts of Appeal. Is cruel and unusual punishment to be treated as immune from judicial interference and as though it were simply part of a prisoner's discipline, as the court below has ruled? May a federal district court dismiss without any hearing of the facts, a federal prisoner's petition for *habeas corpus,* alleging cruel and unusual punishment by his federal jailers?

Is the federal judicial system without jurisdiction and otherwise powerless to protect a federal prisoner's right to be free from unconstitutional punishment by federal prison authorities? Two circuits have held that the federal courts are not powerless. One has held that they are.

The issue is so fundamental and the conflict is so inescapably presented that this Court should now resolve it.

It is therefore respectfully submitted that the petition for certiorari should be granted.

June 6, 1952.

Respectfully submitted,

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APPENDIX

The Eighth Amendment to the United States Constitution:

> "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted".

Title 28 United States Code, Section 2243 (insofar as here appropriate);

> "A court, justice or judge entertaining an application for a writ of habeas corpus shall forthwith award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto.
>
> "The court shall summarily hear and determine the facts, and dispose of the matter as law and justice require. June 25, 1948, c. 646, 62 Stat. 965."

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In the Supreme Court of the United States

OCTOBER TERM, 1952

No. 110

WILLARD WILLIAMS, PETITIONER

v.

DR. IVAN W. STEELE, WARDEN, U. S. MEDICAL CENTER, SPRINGFIELD, MISSOURI

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The order of the District Court dismissing the petition for a writ of habeas corpus (R. 5-6) is not reported. The opinion of the Court of Appeals (R. 10-14) is reported at 194 F. 2d 32, and the opinion on the petition for rehearing (R. 26-27) is reported at 194 F. 2d 917.

JURISDICTION

The judgment of the Court of Appeals was entered on February 5, 1952 (R. 15), and a petition for rehearing (R. 15-25) was denied on March 10, 1952 (R. 27). The petition for a writ of certiorari was filed on June 7, 1952. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether a prisoner, lawfully in custody under a federal sentence, may, by the writ of habeas corpus, test the legality of his treatment in prison.

CONSTITUTIONAL PROVISION AND STATUTES INVOLVED

The Eighth Amendment to the United States Constitution:

> Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

28 U.S.C. 2243, Act of June 25, 1948, ch. 646, 62 Stat. 965:

> A court, justice or judge entertaining an application for a writ of habeas corpus shall forthwith award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto.
>
> * * * * *
>
> The court shall summarily hear and determine the facts, and dispose of the matter as law and justice require.

18 U. S. C. 4042, Act of June 25, 1948, ch. 645, § 1, 62 Stat. 849:

Duties of Bureau of Prisons

The Bureau of Prisons, under the direction of the Attorney General, shall—

(1) have charge of the management and regulation of all Federal penal and correctional institutions;

(2) provide suitable quarters and provide for the safekeeping, care, and subsistence of all persons charged with or convicted of offenses against the United States, or held as witnesses or otherwise;

(3) provide for the protection, instruction, and discipline of all persons charged with or convicted of offenses against the United States.

This section shall not apply to military or naval penal or correctional institutions or the persons confined therein.

STATEMENT

In a habeas corpus petition filed on May 19, 1951, in the United States District Court for the Western District of Missouri, petitioner alleged that, after having been found guilty of a federal crime and incarcerated under a life sentence in the United States penitentiary at McNeil Island, Washington, he was on June 1, 1949, transferred to the United States Medical Center at Springfield, Missouri, because of his ill health (R. 1-2); that on February 26, 1950, he was "taken to isolation for a period

of seventeen days' confinement;" that on March 8 he experienced the "first series of excruciatings;"[1] that from March 16 to June 2, 1950, he was confined in a barren cell and suffered a severe burn on his left arm due to "excruciatings" by persons whose true names were unknown; that he was confined in a barren cell from June 11 to June 19, and from August 23 to October 18, 1950; that during the periods of confinement the "excruciatings" became so unbearable that petitioner "voiced his grievance to the officials on numerous occasions, without consequence" (R. 3).

Petitioner further alleged that under 28 U.S.C. 2243 (*supra*, p. 2) the judge is "not limited to a simple remand or discharge of the prisoner, but he may remand with directions that the prisoner's retained civil rights be respected, or the court may order the prisoner placed in the custody of the Attorney General of the United States for transfer to some other institution" (R. 4). In concluding his pleading, petitioner prayed that he "be restored to his rightful protection, as law and justice requires and demands" (R. 5).

The district judge, without a hearing and without an opposition pleading from respondent, entered an order dismissing the petition for a writ of habeas corpus, on the ground that, since the petition indicated that petitioner was lawfully in custody, the court had no jurisdiction to interfere.

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[1] These may possibly refer to shock treatments which the prison doctors considered necessary for the improvement of petitioner's condition as a mental patient.

In his order the judge stated that "[t]he petitioner is deprived of no rights by the prison authorities in the exercising and enforcing of regulations and regimentation and discipline. If a prisoner should be mistreated by prison authorities, the Department of Justice has the power to correct any abuses that may occur in the executive branch of the government under which the respondent operates; or any person wrongfully inflicting injuries upon the person of petitioner while a prisoner may be prosecuted, as stated in the Logan case [*Logan* v. *United States,* 144 U.S. 263]" (R. 5).

On appeal (R. 6), the Court of Appeals unanimously affirmed the judgment (R. 15).

ARGUMENT

The decision of the court below is supported by the great weight of authority and should not be disturbed.

The traditional function of the writ of habeas corpus is to inquire into the legality of detention. Authorized judicial relief is confined to the discharge of the prisoner or his admission to bail. *Eagles* v. *Samuels,* 329 U.S. 304, 315; *McNally* v. *Hill,* 293 U.S. 131, 136; *In re Boardman,* 169 U.S. 39, 43. No decisions of this Court have expanded the scope of the writ of habeas corpus to include jurisdiction on the facts alleged by petitioner in the instant case.

Under 18 U.S.C. 4042 (*supra,* p. 3) Congress has expressly entrusted to the Bureau of Prisons, under the direction of the Attorney General, the

"management and regulation of all Federal penal and correctional institutions," and the duty to provide for the "safekeeping, care, and subsistence" and the "protection, instruction, and discipline" of federal prisoners. The weight of federal authority has recognized for many years the clearly expressed intention of Congress to impose upon the Bureau of Prisons, rather than upon the federal district courts, the duty of supervising the treatment and discipline of federal prisoners. Numerous decisions have held that, while the federal courts undoubtedly have power on habeas corpus to deliver from prison those illegally detained, they do not have power to supervise the treatment or discipline of those legally in custody in federal institutions. *Sarshik* v. *Sanford,* 142 F. 2d 676 (C.A. 5); *Platek* v. *Aderhold,* 73 F. 2d 173, 175 (C.A. 5); *Stroud* v. *Swope,* 187 F. 2d 850, 851-852 (C.A. 9), certiorari denied, 342 U.S. 829; *Taylor* v. *United States,* 179 F. 2d 640, 643 (C.A. 9); *Numer* v. *Miller,* 165 F. 2d 986 (C.A. 9); *Snow* v. *Roche,* 143 F. 2d 718, 720 (C.A. 9), certiorari denied, 323 U.S. 788; *Sturm* v. *McGrath,* 177 F. 2d 472, 473 (C.A. 10); *Dayton* v. *Hunter,* 176 F. 2d 108, 109 (C.A. 10), certiorari denied, 338 U.S. 888; *Powell* v. *Hunter,* 172 F. 2d 330, 331 (C.A. 10); *Shepherd* v. *Hunter,* 163 F. 2d 872, 874 (C.A. 10). It has been pointed out that testing the question of alleged mistreatment by a petition for a writ of habeas corpus would "open the door to a flood of applications from federal prisoners which would seriously

hamper the administration of our prison system." Cf. *Stroud* v. *Swope, supra,* 187 F. 2d at 852.

The alleged conflict claimed by petitioner (Pet. 5-7) does not really exist. *Johnson* v. *Dye,* 175 F. 2d 250 (C.A. 3), reversed, 338 U.S. 864, does not involve the issue here presented. There the Third Circuit held that a person detained in Pennsylvania for extradition to the State of Georgia should be released from custody where the undisputed evidence was to the effect that, when previously incarcerated in Georgia, he had been subjected to cruel and inhuman punishment.[2] The relief there sought was traditional habeas corpus relief—release from custody. The case did not present the issue of whether one rightfully in custody could by habeas corpus test the legality of his treatment while in custody.

Coffin v. *Reichard,* 143 F. 2d 443, 444 (C.A. 6) is a contrary holding on the specific issue here involved, but the vitality of that decision has been dissipated by the later Sixth Circuit case of *Kemmerer* v. *Benson,* 165 F. 2d 702, 703, certiorari denied, 334 U.S. 849, which does not even mention it, and expressly follows the majority rule stated in *Platek* v. *Aderhold,* 73 F. 2d 173 (C.A. 5), *supra,* p. 6), that the question of improper treatment of a

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[2] The reversal by this Court was apparently predicated on the ground that it was necessary to exhaust state remedies before applying for relief in the federal courts. 338 U.S. 864. See *U. S. ex rel. Jackson* v. *Ruthazer,* 181 F. 2d 588 (C.A. 2); *Johnson* v. *Matthews,* 182 F. 2d 677, 682 n., 685 n. (C.A.D.C.), certiorari denied, 340 U.S. 828.

prisoner is not an appropriate subject authorizing his discharge under an application for a writ of habeas corpus. Thus there is no authoritative decision in conflict with the decision below.

There is no substance in petitioner's contention that the effect of the decision of the court below is to hold that a mistreated federal prisoner has no judicial remedy to test the illegality of mistreatment (Pet. 16). The only question involved was whether habeas corpus was a proper vehicle for petitioner to test his claim that he was being subjected to cruel and unusual punishment in violation of the Eighth Amendment. What other remedies might be available or the degree of their effectiveness were not germane. It will be time enough to rule upon these questions when they may be raised by petitioner in appropriate judicial proceedings.[3] The court below clarified the above situation in its opinion on the petition for a rehearing by unequivocally stating that the sole, narrow scope of its holding was that the application of

[3] Suggested remedies for petitioner, assuming that he is able to prove mistreatment, are (1) Injunction against the warden for "abuse of lawful duty or wrongful usurpation of power." Cf. *Laughlin* v. *Cummings*, 105 F. 2d 71, 73 (C.A. D.C.). (2) Prosecution under 18 U.S.C. 241 and 242 for civil rights violations. Cf. *Logan* v. *United States*, 144 U.S. 263; (R. 5). (3) Addressing uncensored communications of complaint to the Director of Bureau of Prisons and to members of Congress. See Federal Prisons—1946, p. 17: "The use of the prisoners' mail box, the procedure through which inmates may write letters, uncensored in institutions, to the Director of the Bureau and to certain other public officials [including Congressmen], reached a new high level." See also *Lowe* v. *Hiatt*, 77 F. Supp. 303, 305 (M.D. Pa.). (4) Civil action for damages. Cf. *Gordon* v. *Garrson*, 77 F. Supp. 477, 479-480 (E.D. Ill.); 72 C.J.S. § 13, pp. 865-866.

habeas corpus could not be "extended to embrace the correction of alleged unconstitutional mistreatment by prison authorities subsequent to valid judgment and commitment" (R. 26-27).

CONCLUSION

The clear weight of federal authority is in accordance with the holding of the court below and there is no authoritative decision to the contrary. It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

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JULY, 1952.

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